Azlan bin Maidin & Anor v Pentadbir Tanah Melaka Tengah & Anor

HIGH COURT (MELAKA) — ORIGINATING SUMMONS NO 24–461 OF 2004
LOW HOP BING J
28 NOVEMBER 2006

Land Law — Transfer — Registration — Setting aside — Application to set aside transfer to purchaser on the ground that vendor was holding land in trust for plaintiffs — Plaintiffs' caveats lapsed — Whether plaintiffs had right or locus standi to commence action to set aside transfer

The original registered owner of the land was one Zamnah bte Maidin who was the plaintiffs' sister. The plaintiffs' case was that Zamnah was holding the land in trust for all her siblings including the plaintiffs. Zamnah had on or about 19 November 1986 transferred the land to the first plaintiff's sister-in-law, one Jamilah bte Mohd Isa as a trustee and Jamilah had subsequently transferred the land to her son Asren bin Daud who, having taken a loan from a bank, had defaulted. On 6 December 2003 pursuant to a land administrator's order for sale, at a public auction held at the Melaka Tengah land office, the second defendant successfully bid for the land at a consideration of RM270,000. On 9 February 2004, the first plaintiff lodged a private caveat on the land ('the first caveat'). On 27 August 2004, the second plaintiff lodged another private caveat on the land ('the second caveat'). Both caveats then lapsed and the second defendant was registered as the new owner of the land. On 29 October 2004, the plaintiffs filed an originating summons to set aside the transfer of the land to the second defendant. The second defendant then applied to strike out plaintiffs' application. It was submitted for the second defendant that the first caveat and the second caveat lodged by the first plaintiff and second plaintiff respectively had lapsed on 5 September 2004 and 7 November 2004, as a result of which they did not have any right or *locus standi* to commence this originating summons.

Held, striking out the plaintiffs' application:

(1) As the two caveats had lapsed, the plaintiffs were no longer relying on any claim to a caveatable or registrable interest in the land. They were therefore not relying on nor entitled to a decree of specific performance. The affidavits filed had also shown that the plaintiffs had never become the registered owners or purchasers of the land. At all material times, their sister Zamnah, and then their sister-in-law, Jamilah had been the owner successively until the land was ultimately sold to the second defendant at a public auction pursuant to the order for sale. The plaintiffs had not discharged their burden in establishing their locus standi (see para 8).

(2) The plaintiffs' allegations that the then registered owner, ie their sister Zamnah had held the land in trust for them and had subsequently transferred the land to Jamilah who was alleged to have committed a breach of trust by transferring the land to her son Asren, may have implicated their sister Zamnah and their sister-in-law Jamilah on grounds of alleged breaches of trust. On those allegations, the plaintiffs' cause of action may well be against Zamnah and Jamilah (see para 9).

[Bahasa Malaysia summary

Pemilik berdaftar yang asal ke atas tanah adalah Zamnah bte Maidin yang mana adalah saudara perempuan plaintif. Kes plaintif adalah Zamnah memegang tanah secara amanah untuk kesemua saudara kandungnya termasuk plaintif-plaintif. Zamnah telah pada atau kira-kira 19 November 1986 memindahkan tanah tersebut kepada saudara perembuan ipar plaintif pertama Jamilah bte Mohd Isa sebagai pemegang amanah dan Jamilah seterusnya memindahkan tanah tersebut kepada anaknya Asren bin Daud yang mana telah mengambil pinjaman daripada bank dan gagal membuat pembayaran balik. Pada 6 Disember 2003 menurut perintah jualan pentabdir tanah di lelongan awam yang diadakan di pejabat tanah Melaka Tengah, defendan kedua telah berjaya membida untuk tanah tersebut dengan balasan RM270,000. Pada 9 Februari 2004, plaintif pertama membuat kaveat persendirian ke atas tanah tersebut ('kaveat pertama'). Pada 27 Ogos 2004, plaintif kedua membuat kaveat persendirian yang lain ke atas tanah tersebut. Kedua-dua kasveat tersebut kemudiannya telah luput dan defendan kedua telah didaftarkan sebagai pemilik baru tanah tersebut. Pada 29 Oktober 2004, plaintiff-plaintif telah menfailkan satu saman pemula untuk mengenepikan pindah milik tanah kepada defendan kedua. Defendan kedua kemudiannya memohon untuk membatalkan permohonan plaintif. Adalah dihujahkan untuk defendan kedua bahawa kaveat pertama dan kaveat kedua yang dibuat oleh plaintif pertama dan kedua masing-masing telah luput pada 5 September 2004 dan 7 November 2004, oleh yang demikian kedua-dua daripada mereka tidak mempunyai hak atau *locus standi* untuk memulakan saman pemula ini.

Diputuskan, membatalkan permohonan plaintif:

(1) Berkenaan dengan dua kaveat yang telah luput, plaintif-plaintif tidak boleh lagi bergantung kepada apa-apa tuntutan untuk kepentingan kaveat atau pendaftaran ke atas tanah. Oleh sebab itu, mereka tidak bergantung atau berhak kepada dikri perlaksanaan spesifik. Afidavit-afidavit yang difailkan juga menunjukkan bahawa plaintif-plaintif tidak pernah menjadi pemilik berdaftar atau pembeli kepada tanah tersebut. Pada setiap masa material, saudara perempuan mereka Zamnah dan kemudiannya saudara perempuan ipar mereka Jamilah telah berturut-turut menjadi pemilik sehingga tanah tersebut akhirnya telah dijual kepada defendan kedua di lelongan awam menurut perintah jualan. Plaintif-plaintif tidak melepaskan beban mereka di dalam membuktikan *locus standi* mereka (lihat perenggan 8).

(2) Dakwaan plaintif bahawa pemilik berdaftar seterusnya, iaitu saudara perempuan mereka Zamnah yang memegang tanah tersebut secara amanah untuk mereka dan kemudiannya memindahkan tanah tersebut kepada Jamilah yang mana didakwa melakukan pecah amanah dengan memindahkan tanah kepada anaknya Asren, yang mana membabitkan saudara perempuan mereka Zamnah dan saudara perempuan ipar mereka Janilah atas alasan dakwaan pecah amanah. Berdasarkan dakwaan-dakwaan tersebut, kausa tindakan plaintif sepatutnya terhadap Zamnah dan Jamilah (lihat perenggan 9).]

Notes

For cases on registration, see 8(2) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 4642–4648.

Zainur Zakaria (Kenneth Gomes with him) (Sabarudin Othman & Ho) for the plaintiff. Ahmad Musthafi bin Mohamed (Koh Kim Leng & Co) for the second defendant.

Low Hop Bing J:

APPLICATIONS

[1] Before me are the following applications:

(1) Plaintiffs encl (1) by way of originating summons, seeking, inter alia, an order that the first defendant ('the land administrator') do expunge the registration and transfer to the second defendant of the land held under GMM 204 Lot 917 in the mukim of Pringgit, state of Melaka ('the land') vide presentation No 3751/2004; and

(2) Second defendant's encl (9) by way of summons in chambers seeking an order to strike out plaintiffs encl (1).

FACTUAL BACKGROUND

[2] The original registered owner of the land was one Zamnah bte Maidin who is the plaintiffs' sister. The plaintiffs alleged that:

(1) Zamnah was holding the land in trust for all her siblings including the plaintiffs, and had filed originating summons No MT2–24–182 of 2002 to recover the land, which had been fixed for hearing on 21 March 2005 and the decision therein would depend on the outcome of these two applications before me;

(2) Zamnah had on or about 19 November 1986 transferred the land the first plaintiffs sister-in-law, one Jamilah bte Mohd Isa as a trustee; and

(3) Jamilah had subsequently transferred the land to her son Asren bin Daud who, having taken a loan from a bank, had defaulted.

[3] The other relevant chronology of events may be tabulated as follows: **A**

6 December 2003

Pursuant to a land administrator's order for sale, at a public auction held at the Melaka Tengah land office, the second defendant successfully bidded for the land at a consideration of RM270,000. **B**

9 February 2004

The first plaintiff lodged a private caveat on the land vide presentation No 292/2004 ('the first caveat'). **C**

13 May 2004

The second defendant completed full payment of the consideration to the chargee bank and presented the certificate of sale in Form 161 vide presentation No 3751/2004. **D**

19 May 2004

The chargee bank lodged Form 19H for the purpose of removing the first caveat in accordance with s 326 of the National Land Code 1965. **E**

5 July 2004

The first defendant (land administrator) served Form 19C on the first plaintiff requiring the first plaintiff to remove the first caveat or to obtain an order from the court to extend the same within two months thereof ie on or before 5 September 2004 but the first plaintiff had failed to do so and the first caveat lapsed on 5 September 2004. **F**

27 August 2004

The second plaintiff lodged another private caveat on the land vide presentation No 2048/2004 ('the second caveat'). **G**

6 September 2004

The first defendant registered the certificate of sale in Form 161 presented by the second defendant vide presentation No 3751/2004. The second defendant (the successful bidder and the new owner) lodged Form 19H to remove the second caveat. **H**

7 September 2004

I

The first defendant served Form 19C on the plaintiff requiring the second plaintiff to remove the second caveat or obtain an order from the court to extend the same within two months, ie on or before 7 November 2004, but the second plaintiff had failed to do so. The second caveat lapsed on 7 November 2004.

29 October 2004

The plaintiffs filed originating summons in encl (1) seeking an order inter alia to set aside the transfer of the land to the second defendant.

30 June 2005

The second defendant filed The second defendant filed summons in chambers in encl (9) to strike out plaintiffs' encl (1)

LOCUS STANDI

[4] It was submitted by En Ahmad Musthafi bin Mohamed that the first caveat and the second caveat lodged by the first plaintiff and second plaintiff respectively had lapsed on 5 September 2004 and 7 November 2004, as a result of which they do not have any right or *locus standi* to commence this originating summons.

[5] Plaintiffs' learned counsel Dato Zainur Zakaria (Mr Kenneth Gomes with him) did not deny the fact that the two caveats had lapsed but contended that the facts surrounding the plaintiffs' application not only disclose a reasonable cause of action but also strong grounds for allowing the application itself.

[6] In my view, these two applications revolve around the fundamental issue of the plaintiffs *locus standi*. That being the case, it is appropriate for me to hear and determine encl (9) first.

[7] The burden is cast on the plaintiffs to establish that they have the necessary *locus standi* to commence encl (1) against the defendants.

[8] As the two caveats have lapsed, the plaintiffs are no longer relying on any claim to a caveatable or registrable interest in the land. They are therefore not relying on nor entitled to a decree of specific performance. The affidavits filed herein have also shown that the plaintiffs had never become the registered owners or purchasers of the land. At all material time, their sister Zamnah, and then their sister-in-law, Jamilah had been the owner successively until the subsequent transfers alluded to in the above chronology of events. The land was ultimately sold to the second defendant at a public auction pursuant to the order for sale. I find that the plaintiffs have not discharged their burden in establishing their *locus standi*.

[9] The plaintiffs' allegations, that the then registered owner, ie their sister Zamnah had held the land in trust for them and had subsequently transferred the land to Jamilah who was alleged to have commited a breach of trust by transferring the land to her son Asren, may have implicated their sister Zamnah and their sister-in-law Jamilah on grounds of alleged breaches of trust. On those allegations, the plaintiffs' cause of action may well be against Zamnah and Jamilah. However, it must be immediately emphasised that I express no opinion on merits of that cause of action if any.

[10] On the applications before me, I need only say that the plaintiffs have not discharged their onus of proving that they have the *locus standi* to commence their application in encl (1) against the defendants.

CONCLUSION

[11] By reason of the above, I hold that the plaintiffs' application in encl (1) should be struck out with costs which I hereby do. Consequentially, I make an order in terms of defendants' application in encl (9).

Application struck out with costs.

Reported by Loo Lai Mee